IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 512 OF 2005
IN
SUIT NO.3737 OF 1996

M/s Pranami Press ... Plaintiff

vs

M/s West Coast Brewers Distill.Ltd..Defendant
&
Shruti Re-Rollers P.Ltd & anr .. Applicants

Mr.G.B.Kedia for Plaintiff

Mr.S.Shetty i.b M.M.Vashi for Applicants

CORAM :SMT R.S.DALVI, J

DATE : 6th February, 2007

P.C.

1. The applicants have applied for raising the attachment levied on the immovable property claimed to be owned by them.

2. This Summary Suit has been decreed upon the defendants in the suit not depositing the amount directed to be deposited on Summons for Judgment. The decree came to be passed in 2002. The attachment came to be levied on the premises now claimed by the applicants in 2004.

3. The applicants must show their ownership rights

to the property claimed to be able to raise the attachment and stay the execution of the decree on the property attached.

4. The applicants have relied upon an agreement for sale dated 9th January, 1985 with one Surlux Impex Pvt Ltd. The agreement is not registered. The applicants cannot rely upon that agreement for claiming their rights thereunder. The said Surlux Impex Pvt Ltd has gone into liquidation. The applicants were found in possession of the premises after the company went into liquidation and a provisional Liquidator was appointed. Consequently, pending the liquidation proceedings in Company Application No.513 of 2000 in the said Company Petition for winding up, being Company Petition No.275 of 1995, an order came to be passed by the learned Single Judge of this Court (Mrs K.K.Baam, J) (as she then was) on 5th March, 2001 making the Judge's Summons absolute in terms of prayer clauses (a) and (b) thereof. Consequently, the applicants' possession came to be protected pending the winding up proceedings.

5. In an appeal filed therefrom, a Division Bench of this Court directed the Official Liquidator to hand over the possession of the premises to the

applicants herein. However, the applicants were directed not to sell the property or encumber the said premises pending appeal.

6. Consequently, it is seen that only possession of the Applicants is protected. The ownership rights have not been adjudicated upon.

7. Thereafter, warrant of attachment was levied on the property after a decree came to be passed against the defendants. The defendants have been served with the writ of summons at the address of the applicants. I am told that advocate for the applicants appeared as advocate for the defendants to defend the Summons for Judgment also. The applicants have not shown their right, title and interest in the suit property. In fact, the applicants have shown that only their possession has been protected pending Company the Application and pending the winding up proceedings. That application or that order does not bar a creditor from realising his debts under a decree obtained by the creditor. Consequently, attachment before judgment has been taken out correctly,. The applicants have not shown their right, title and interest and are not entitled to raise the attachment.

8. Chamber Summons is dismissed.

9. No order as to costs.

(Smt R.S.Dalvi,J)